UNITED STATES DISTRICT COURT DISTRICT OF NEVADA RENO, NEVADA

STATE OF NEVADA, ex rel.	RODNEY PETZAK,) 3:09-CV-608-ECR-RAM	
STATE OF NEVADA, ex rel. DEPARTMENT OF CORRECTIONS, Defendant. PRESENT: EDWARD C. REED, JR. Deputy Clerk: COLLEEN LARSEN Reporter: NONE APPEARING Counsel for Plaintiff(s) NONE APPEARING	Plaintiff,) MINUTES OF THE COURT	
DEPARTMENT OF CORRECTIONS, Defendant. PRESENT: EDWARD C. REED, JR. Deputy Clerk: COLLEEN LARSEN Reporter: NONE APPEARING Counsel for Plaintiff(s) NONE APPEARING	vs.	DATE: November 12, 2010	
PRESENT: EDWARD C. REED, JR. U. S. DISTRICT JUDGE Deputy Clerk: COLLEEN LARSEN Reporter: NONE APPEARING Counsel for Plaintiff(s) NONE APPEARING	STATE OF NEVADA, ex rel. DEPARTMENT OF CORRECTIONS,)))	
Deputy Clerk: <u>COLLEEN LARSEN</u> Reporter: <u>NONE APPEARING</u> Counsel for Plaintiff(s) <u>NONE APPEARING</u>	Defendant.	,) _)	
Counsel for Plaintiff(s)NONE APPEARING	PRESENT: EDWARD C. REED, JR.	U. S. DISTRICT JUDGE	
	Deputy Clerk:COLLEEN LARSEN	Reporter: NONE APPEARING	
Counsel for Defendant(s)NONE APPEARING	Counsel for Plaintiff(s)	NONE APPEARING	
	Counsel for Defendant(s)	NONE APPEARING	

MINUTE ORDER IN CHAMBERS

On February 8, 2010, we entered an Order (#22), dismissing Plaintiff's complaint and giving Plaintiff 21 days within which time to file an amended complaint. In that Order (#22), we noted:

In his opposition to the motion before the Court, Plaintiff challenges the constitutionality of Nev. Rev. Stat. § 616C.490 on the grounds that it is unconstitutional under the Equal Protection Clause of the Constitution

We will not consider this claim because it was not raised in Plaintiff's complaint. See Coleman v. Quaker Oats Co., 232 F.3d 1271, 1292-93 (9th Cir. 2000) We note, however, that even if we were to consider the claim, it would likewise be barred by the Eleventh Amendment. See Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 311 n.10 (1997) (noting that 42 U.S.C. § 1983 does not abrogate the states' Eleventh Amendment immunity).

On February 25, 2010, Plaintiff filed the amended complaint (#24), which is the subject of the pending motion to dismiss (#25). In the amended complaint, Plaintiff asserts one claim: He alleges that Nev. Rev. Stat. § 616C.490, the statute under which Plaintiff sought and received

disabilities benefits, violates the Equal Protection Clause of the United States Constitution. Plaintiff's claim, brought against the State of Nevada, is barred by the Eleventh Amendment. Plaintiff's complaint will therefore be dismissed. We further conclude, in light of our previous admonition, that granting Plaintiff further leave to amend would be futile.

IT IS, THEREFORE, HEREBY ORDERED that Defendant's Motion to Dismiss
(#25) is GRANTED.

The Clerk shall enter judgment accordingly.

LANCE S.	WILSON,	CLERK
By	/s/	
Dep	uty Cler	k